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from surprising the other, and to avoid unnecessary consumption of time, and the judge can do both, if he is fit for his place, and not too much circumscribed by rules which he must observe. In some way our bar has identified the preservation of such rules with the liberty and rights of the citizens, and while it on occasion can indulge in rhetorical praise of the bench as the keystone of our constitution, in practice it too often regards with extreme jealousy and as a usurpation any latitude which the bench may allow itself in disregarding rules of procedure.

The gradual melioration which the federal bench has from time to time effected by using the rules of practice, rather as a guide to proper procedure, than as an absolute condition of any approach to the court, Mr. Street shows very clearly. To those who use the book intelligently, and above all to judges who can apprehend that the whole matter finally lies in their hands, he should be a comfort and a refuge. He shows himself to be a sane observer, willing patiently to comprehend the meaning of the system he has undertaken to set forth, and intelligent enough to observe that it is, even as it stands, a living instrument in the hands of men, usually somewhat unfamiliar with its historic significance, but determined to make it the means for the actual despatch of the business at hand. L. H.

ELEMENTS OF THE LAW OF DAMAGES: A Handbook for the Use of Students and Practitioners. By Arthur George Sedgwick. Second Edition, Revised and Enlarged. Boston: Little, Brown and Company. 1909. pp. xxxv, 368.

The text and the number of citations of this work, which accompanies a second edition of Professor J. H. Beale's Cases on Damages, are considerably enlarged after an interval of thirteen years. "The chief additions relate to Mental Suffering, . . . Death by Wrongful Act, Compensation and Benefits under Eminent Domain Statutes, Interference with Contract and the right to seek Employment, Liquidated Damages, Limitations of Liability," Damages in certain classes of contracts, Conflict of Laws, and Pleading and Practice. - Entire new chapters on Eminent Domain, Conflict of Laws, and Pleading and Practice appear in this edition.

Mr. Sedgwick prefers the views of the Rhode Island and later English cases (*Simone v. The Rhode Island Co.*, 28 R. I. 186, and *Dulieu v. White* (1901), 2 K. B. 669), that recovery can be had for physical injury resulting from fright caused by negligence to the New York and Massachusetts decisions (*Mitchell v. Rochester*, 151 N. Y. 107, and *Spade v. Lynn & Boston R. R. Co.*, 168 Mass. 285), which leave such a plaintiff remediless. Thus he finds the theory of proximate cause in actions for physical injury produced by negligence at length properly dealt with. He has made no change in his views as to exemplary damages. See 9 HARV. L. REV. 491. The growing importance of the subject of Conflict of Laws justifies the short chapter thereon. Here the author indicates that the law of the place of the performance of the contract should govern the measure of damages and the interest on the amount thereof. The peculiar Massachusetts rule that the rate of interest is determined as a matter of remedy by the *lex fori* (*Barringer v. King*, 5 Gray 9) he characterizes very properly as "local and technical." The many positive virtues noted in the first edition have, speaking generally, been perpetuated and enlarged in the new. J. W.

A TREATISE ON THE FEDERAL EMPLOYERS' LIABILITY AND SAFETY APPLIANCE ACTS. By W. W. Thornton. Cincinnati: The W. H. Anderson Company. 1909. pp. xlvii, 410. 8vo.

Mr. Thornton's book consists of two distinct parts — one of one hundred and thirty-nine pages on the Employers' Liability Act of 1908, and one of ninety-

eight pages on the Safety Appliance Act of 1893 as amended by the Acts of 1896 and 1903. The jurisdictional and constitutional questions arising under the two Acts are almost identical, so that the value of the careful discussion of these points is greatly increased by their parallel treatment. The author has not attempted to collect all the cases involving interstate commerce. He has simply arranged in a clear way the decisions defining specifically the limits of federal power in relation to the special railway regulations under discussion. On non-jurisdictional points the two Acts are distinct. The decisions on the Employers' Liability Act are as yet very few, and since it introduces a new rule of comparative negligence as a measure of damages common-law cases are of little value. For that reason, until decisions under the Act appear, the author's collection of cases from Georgia and Illinois, where a similar rule prevails, will be very helpful. Furthermore, his quotations from the Congressional Record showing the intended purpose of the Act are appropriate and cannot otherwise readily be found. The case of the Safety Appliance Act is different. There the decisions, especially in the circuit courts, are fairly numerous but unfortunately not in accord. The author has collected the conflicting authorities, but perhaps for the sake of brevity has sometimes omitted to give his own reasons for preferring either view. Possibly in discussing the question of whether or not a carrier operating entirely in one state is subject to the Act (see §§ 132-134), these reasons would be superfluous, but on the question of the degree of care required in discovering defects and making repairs (see §§ 155 and 156) the author's personal analysis of the situation would be interesting. The arrangement of the discussion throughout is very clear, so that any point can easily be found without the index. The appendix contains the text of various acts and copies of pertinent opinions unreported before March 23, 1909.

P. K.

QUESTIONS AND ANSWERS FOR BAR-EXAMINATION REVIEW. By Charles S. Haight and Arthur M. Marsh. Second Edition. New York: Baker, Voorhis and Company. 1909. pp. lii, 585. 8vo.

While the questions and answers in this book are framed primarily with a view to recalling important points to those who have already acquired a fairly thorough knowledge of the fundamental theories involved, it would be a mistake to assume that they do not contain much illuminating discussion of questions on which the authorities are not settled. The discussions, to be sure, are not lengthy: lengthy discussions would impair the value of the book to those reviewing for bar examinations. But the brief summaries of how the authorities stand, with the citations and discussions of each line of authority, are so clear that they may be consulted with profit by the student or practitioner, as well as by the "crammer." This will be seen by a glance at the section on unauthorized acts of private corporations, p. 135, or the section on contracts for the benefit of third persons, pp. 103, 104. These selections are chosen at random, and there are many others of equal value. A well-arranged index and an accurate table of cases increase the usefulness of the book for purposes of reference.

A book of this nature almost necessarily contains statements which though literally accurate would be apt to mislead those not familiar with the propositions of law underlying the answers. For example the statement on p. 193 that a marriage legally contracted is valid anywhere if valid by the *lex loci contractus* even if invalid by the law of the domicile might easily cause confusion in regard to the control over a person's status exercised by the law of his domicile. Such instances, however, are not to be considered as defects in the work. They merely go to show that the book cannot be used safely by those who depend on it as their only source of information: a use by no means designed by the authors.

The section on the New York Code deserves special mention. The essential points of the code are dealt with. The exact language of the code is used in the